

LUCILLE LIPPHARDT

IBLA 76-200

Decided February 25, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying appellant's petition for reinstatement of nonproducing oil and gas lease.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Reinstatement: Generally

A lessee who is out of town on vacation on the lease anniversary date and who mails the lease rental payment 6 days after the due date is not reasonably diligent.

2. Oil and Gas Leases: Reinstatement -- Reinstatement: Generally

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has delayed payment until just before the due date and has entrusted the function to an agent whose subagent neglects to make payment timely, the lack of diligence on the part of the lessee and/or his agent and/or subagent, and not the adverse circumstances confronting appellant's agent, constitute the proximate cause of the late payment and a decision denying reinstatement will be affirmed.

APPEARANCES: Lucille Lipphardt, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appellant, Lucille Lipphardt, has filed this appeal from a decision of the Utah State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of a nonproducing oil and gas lease, U-6521. The lease was terminated automatically, by operation of law, for failure to pay the annual lease rental on or before the anniversary date of the lease, August 1. 30 U.S.C. § 188(b) (1970).

Payment of the lease rental was received by the BLM on August 11, 1975. The envelope in which it was transmitted bore the postmark "August 8." Record title to the lease is in the name of A. L. Lipphardt. Appellant avers that A. L. Lipphardt was her husband, that he died in November of 1974, and that his leasehold interest passed to her by will upon his death.

In support of her appeal, appellant alleges that she took a vacation the latter part of July, that she could not get back until August 2, and that she left a check in payment of the rental with a friend whom she instructed to mail the check to the BLM on the 29th. It is further stated by appellant that her friend was suddenly forced to leave town on the day before he was to mail the check because of an illness in the family, that the friend left instructions that the check was to be mailed in his absence by still another person, that her friend did not return to town until August 3, and that he did not discover the check had not been mailed until August 7, whereupon he mailed the check to the BLM.

Appellant further asserts that she understood the rental payment "had to be postmarked the day it was due." She contends that if she had realized that the rental could be paid before the due date, she would have made the payment before leaving for vacation. Contrary to appellant's belief, the payment must be received on or before the due date in order to prevent the termination of the lease.

The statute governing reinstatement of terminated oil and gas leases expressly provides that it must be "[S]hown to the satisfaction of the Secretary of the Interior that such failure [to pay the rent timely] was either justifiable or not due to a lack of reasonable diligence * * *." 30 U.S.C. § 188(c) (1970). The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-1(c)(2).

[1] Reasonable diligence generally requires sending rental payments sufficiently in advance of the anniversary date of the lease

to allow for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2); M. J. Harvey, Jr., 19 IBLA 230 (1975). This Board has previously held that a lessee who mailed his rental payment 6 days after the due date was not reasonably diligent. Vern H. Bolinder, 17 IBLA 9, 11 (1974).

[2] Neither lack of knowledge of the law nor the failure of an agent to mail the rental payment in time constitutes a justifiable excuse for late rental payment by the lessee. Vern H. Bolinder, *supra* at 11. Failure to exercise reasonable diligence in paying the annual rental for an oil and gas lease may be "justifiable" when caused by extenuating circumstances outside the control of the lessee occurring in close proximity to the anniversary date of the lease. Pauline G. Thornton, 17 IBLA 251, 253 (1974). In order to constitute justifiable cause, the extenuating circumstances must be the proximate cause of the lessee's failure to make timely rental payment. See M. J. Harvey, Jr., *supra*; Pauline G. Thornton, *supra*.

It must be concluded that appellant has failed to meet the burden of proving that the late payment was not due to a lack of reasonable diligence. Mailing the payment 7 days after the due date does not constitute due diligence simply because appellant was on vacation at the time that payment was due. Appellant, having engaged an agent for the purpose of making the payment in her stead, will be bound by the acts and omissions of that agent.

Appellant has also failed to meet the burden of proof regarding justifiable cause for the late payment. Ignorance of the relevant law and regulations (as manifested by the asserted belief that payment must be postmarked or received by the BLM on the due date and not before) does not suffice to establish justifiable cause. Although there is some allegation of extenuating circumstances which may have affected the conduct of appellant's agent, we find it unnecessary to rule upon the sufficiency of these allegations to establish justifiable cause for the reason that those circumstances were not the proximate cause of the late payment. Appellant could have avoided the entire situation by making the payment prior to going on vacation in the latter part of July or by transmitting the payment while on vacation. Instead, she elected to delay efforts to make payment and to engage an agent to effectuate payment. Appellant will have to be accountable for the neglect of her agent and/or subagent (whomever the agent directed to mail the correspondence in his absence).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

